



ENVIRONMENTAL REVIEW COMMISSION
December 10, 2014
Room 643 of the Legislative Office Building

The Environmental Review Commission (Commission) met on Wednesday, December 10, 2014 at 9:00 AM. The meeting was held in Room 544 of the Legislative Office Building. Representative Mike Hager presided.

Members present were: Senator Brent Jackson, Chair, Representative Mike Hager, Chair; Senator Austin M. Allran, Senator Stan Bingham, Senator Andrew Brock, Senator Bill Cook, Senator Ronald Rabin, Representative Jimmy Dixon, Representative Pat McElraft, and Representative Chuck McGrady. Dr. Jeff Warren, Senate Senior Policy Advisor; Emily Wilson, House Senior Policy Advisor; Ms. Jennifer McGinnis, Commission Counsel; Mr. Jeff Cherry, Commission Counsel; Ms. Jennifer Mundt, Commission Analyst; Ms. Mariah Matheson, Research Assistant; Lindsey Dowling, and Towers Mingledorff, Commission Clerks; and Sergeants-At-Arms Garland Shepherd, Larry Elliott, Steve Wilson, and Ed Kesler. Attachment #1 and Attachment #2.

Notice was sent to members and interested parties via e-mail on October 20, 2014. A copy of the notice is included in the attachments to these minutes as Attachment #3. Copies of the agenda for the meeting and visitor registration sheets are included in the attachments to these minutes as Attachment #4 and Attachment #5.

Call to Order and Introductory Remarks

Representative Hager called the meeting to order at 9:11 AM and welcomed members, staff, and visitors in attendance. Representative Hager then recognized Senator Brent Jackson for opening statement. Representative Hager proceeds to the agenda.

Report on the implementation of the Coal Ash Management Act of 2014 and other activities related to the management coal ash in the State

Representative Hager recognized Mr. John Elnitsky, Senior Vice President, Ash Basin Strategy of Duke Energy to provide an overview of what Duke Energy has done. Mr. Elnitsky recognized Mr. Harry Sedaris, Senior Vice President of Environmental Health and Safety; Mr. Gary Miller, Senior Vice President of Engineering; and Mr. Paul Newton, President of Duke Energy. He then directed members to his presentation. A copy of his presentation is attached to



these minutes as Attachment #6. Representative Hager opened the floor and the following questions and comments were made:

Senator Cook asked if Duke Energy is doing more than required from the [Coal Ash Management Act of 2014](#) and ahead of schedule. Mr. Elnitsky replied that in some cases they are ahead of schedule with emergency action plans and closure activities. Duke Energy is ready to move forward with excavation projects at the four high priority sites as soon as they receive the permits.

Senator Bingham commented that he can see the work Duke Energy has done and asked what Duke Energy is doing with the recycling of the coal ash from the demand he has seen. Mr. Elnitsky replied that Duke Energy is pursuing reusing opportunities. Duke Energy produces, depending on load and capacity, between 2-3 million tons of ash per year. 400,000 tons of that ash go into beneficial reuse in either concrete or cement market. Their plan with the excavation project is to move some of the ash to a cement reuse. One problem that Duke Energy is trying to work through is from the result of environmental controls, the fly ash that is produced is not the right quality for concrete and cement reuse. They're working on new technologies and ideas to change the ash to be more useful. Primarily the Blewes Creek plant and Cliffside Five have the most fly ash that is usable. There is an opportunity to increase the production in ash that is going to reuse but puts a small dent in the pond.

Representative McGrady commented that he has visited several of the coal ash sites and was wondering if Duke Energy was looking to seek any changes in the current law, such as time table issues, this coming long session. Mr. Elnitsky replied that some of the time lines in the past legislation are aggressive but until they get into production and see what it means to move 5 million tons of ash each year and if they can sustain that production rate to relay onto other facilities there are no suggestions they can make to change the law.

Representative McGrady thanked Duke Energy for making many of the sites accessible to the members. His observation is that the legislation did not take a one size fits all approach and has seen first-hand how different each site is which assures they made the right decision in that approach. As Duke Energy puts together their plans, each will require a unique solution and the public will need to understand. The site visits have reinforced Rep. McGrady's reaction from last year when dealing with the issue.

Senator Allran asked if there were presentations from companies that are in the business of converting ash to make it usable. Mr. Elnitsky replied that there are some conversion technologies possible like carbon burnout that will take some of the residual carbon remaining in the ash and burn it out to get the "loss of ignition point" low enough so that the material is useful in cement or concrete applications. The balance is going to be what is going to be the total pull in the market. A near term goal that is reasonable is to get a lot of the ongoing production ash into beneficial reuse and then go back to the ash that is already stored.



Senator Allran commented that if Duke Energy would take the coal ash that they have and give it to people in the business of converting so the concrete manufactures in this State that are importing from other states would not have to do that. Mr. Elnitsky replied that Duke Energy is taking proposals for those types of solutions. The focus is on how to take the production ash and make it more usable and then will there be other things that will make ponded ash or storage ash more usable. The balance will be what the market can pull versus what it can produce. Production rates are ahead of the market pull right now.

Senator Allran asked if part of Duke Energy's proactive strategy is to work with the people who are in the business of converting rather than storing, capping, or burying the ash so that it can be sold to concrete companies. Mr. Elnitsky replied that they are working with those firms.

Representative Dixon asked if the properties of coal ash are consistent across the coal ash ponds. Mr. Elnitsky replied that in general it is not consistent. The consistency is dependent upon the vintage of when the ash was produced and what the environmental controls were at the time the coal ash was deposited.

With no more further questions, Representative Hager recognized Mr. Michael Sprayberry, Director of Emergency Management at the Department of Public Safety (DPS). He began by stating he feels the Department of Emergency Management is well positioned to support the Coal Ash Management Act and execute the missions they have been assigned. Mr. Sprayberry wanted to publically thank Mr. Michael Jacob's for his assistance. He then directed members to his power point presentation. A copy of his presentation is attached to these minutes as Attachment #7.

Senator Bingham asked what part the Army Corps of Engineers plays with regulations and requirements they have and how the Division of Emergency Management corresponds to work together. Mr. Sprayberry replied that he could not answer that because the dam safety experts would be able to answer the question.

Senator Rabin asked if the plan Mr. Sprayberry has provided contains any information on how often the plans are exercised to make sure they're effective. Mr. Sprayberry replied that there is no information. Senator Rabin responded that it was poor short fall in their planning.

Senator Jackson has a dam and a pond in his district that has been there for a century with no episodes. His constituents have asked why the inspection was done and he is currently researching for an answer. He asked with these plans being done annually on a facility or pond that has been there for decades if it is necessary for inspections to be done annually and if it has to be done by a certified engineer or what parameters are there due to the cost associated with the inspection to the land owners of the dam which they have not paid in the past leaving more government regulations being pushed down on our citizens. Mr. Sprayberry replied that Senator Jackson is correct and part of the U.S. Environmental Protection Agency (U.S. EPA) requirement of the flood inundation map does needs to be certified by a professional engineer which has a cost associated with that.



With there being no more questions, Representative Hager recognized Mr. Michael Jacobs, Chairman of the Coal Ash Management Commission. Mr. Jacobs first thanked the DPS for helping getting the Commission setup. He then introduced Ms. Natalie Birdwell, Executive Director and Ms. Lisa Schneider, Legal Counsel. Mr. Jacob's then directed members to his presentation. A copy of his presentation is attached to these minutes as Attachment #8.

Representative Dixon thanked Mr. Jacobs for his presentation and was pleased to see the primary goal being information as opposed to misinformation, he applauds his efforts. Mr. Jacobs replied that he wants to take a scientific approach because dump trucks hauling 5 million tons of coal ash on North Carolina back roads is an issue for him and would want to find alternatives to prevent transporting it throughout the state.

Representative McGrady asked if there will be changes the Commission will be recommending in the law to the General Assembly within the next year. Mr. Jacobs replied that he has not had time to address the policy issues but will sit down with members to discuss more.

Representative McGrady commented to work on getting suggestions to the General Assembly soon as long session is approaching. He then asked what the Commission's working relationship was with the Department of Environment and Natural Resources (DENR) and if there were any concerns or conflicts. Mr. Jacobs replied that there have been no issues and DENR is very easy and helpful to work with.

Senator Bingham asked if the Commission will be looking at what has been done worldwide for coal ash reuse. Mr. Jacobs said they will be addressing reuse options at the January 14, 2015 meeting.

Senator Brock asked if there were any thoughts or consideration to holding Commission meetings at Community Colleges. Mr. Jacobs said that there were thoughts about it and holding meetings at Community College is still being considered. The intent of going to Universities was to go to places that have implied research related to some of the meeting topics so they can get information from the programs before or after the meeting. Mr. Jacobs said if Senator Brock has any suggestions of a Community College to let him know as he is a big supporter of the Community College program in North Carolina. They only have one more meeting location booked.

Senator Brock stated it may be easier for parking at a Community College rather than the Universities.

Senator Rabin commented that Community Colleges have more of a grassroots interest so he would like the Commission to really consider conducting meetings there.



With no further questions, Representative Hager recognized Mr. Tom Reeder, Director of Water Resources at the DENR. He then directed members to his presentation. A copy of his presentation is attached to these minutes as Attachment #9.

Senator Bingham asked with the Buck Power Station having 170 wells in the area, was there only 68 owners of the wells wanting to be tested. Mr. Reeder replied that 68 of the wells will be tested because they are within the 1,000 feet. Based on the result of that sampling they will decide if they need to start testing further. If someone is not on the list, DENR will consider testing the well based upon certain basis.

Senator Bingham asked if Mr. Reeder believes the depth of the wells effect things in any way. Mr. Reeder replied that it does and this is why they need the results from the water assessment plants. DENR has no idea how deep the contamination goes and what wells may be in jeopardy.

Senator Bingham made mention to Mr. Jacobs the Buck Power Station is in Lexington, NC and the Davidson County Community College is in the same area. He feels there will be a lot of interest from the community because of the number of wells affected and would like the Community College to be considered as a site of an upcoming meeting.

Senator Brock commented that with the tested plants in Rowan County he would like the meeting on his side of the river. He added that constituents in the area were concerned with the testing is having a problem with getting all the information to get quality and accurate representation without politics being involved which is why he would like to see meetings held at Community Colleges. Mr. Reeder replied that DENR wanted to make the process as independent as possible. DENR will send citizens a letter and it is up to them to return the letter for well testing. Duke Energy will never be involved in the process.

Senator Allran asked if Mr. Reeder could explain the fish tissue sampling of the mercury elevating state wide. Mr. Reeder replied that North Carolina has elevated levels of mercury statewide due to atmospheric deposition of mercury. It is a water problem from the air deposited into lakes and rivers. The State is under a fish consumption advisor from the Department of Health and Human Services due to the elevated mercury levels. These elevated levels are not unique to the Dan River spill.

Senator Allran replied that he is glad the elevated levels are not unique to the spill. He asked how worried should we be and what is being done about the problem. Mr. Reeder replied that DENR is addressing this aggressively. There is a Mercury Minimization Plan that is being implemented to address the issue, stemmed from the Total Maximum Daily Load (TMDL) that the U.S. EPA requires to be implemented any time there is a violation of standards. It is a difficult issue to address because a lot of the mercury does not come from North Carolina, it comes from surrounding states. The problem is not unique to North Carolina; the eastern seaboard is trying to address the issue as well.



Representative McGrady asked if DENR will be requesting the General Assembly to provide some clarity in the law on coal ash stacks due to the current law only addressing coal ash ponds. Mr. Reeder replied that he is not sure about modification but the Department is putting together a package for the upcoming session with questions.

Representative McGrady asked why the U.S. EPA took the position to not decant or dewater coal ash ponds because the legislation has a preference for taking pressure off of dams as a way of not having an implosion. Mr. Reeder replied that U.S. EPA felt that the process was not covered under the permit.

Representative McGrady asked if he could assume that the reason for the need to amend the permit is to allow the decanting and dewatering process. Mr. Reeder replied that he was correct. They need to amend the permit to allow Duke Energy to move forward with decanting, dewatering, and address unsurfaced discharge that seeps into drains.

Senator Rabin asked Mr. Reeder if the contamination was hazardous to human health. Mr. Reeder replied that the constituents of coal ash are primarily heavy metals which are natural to ground water throughout North Carolina. He guaranteed that anyone with a well will have heavy metals. The problem gets down to the large consumptions of heavy metals will increase a cancer risk.

Senator Rabin asked if we are fixing things that do not need to be fixed immediately because it is not hazardous to human health that could be put towards fixing more critical issues. Mr. Reeder says it all depends on what comes back from the well samplings. There is not enough background to answer the question.

Senator Rabin asked if the sampling shows hazardous levels, will the assumption be that it is because of the coal ash in the area. Mr. Reeder replied that DENR will not automatically assume that because of the groundwater assessment plan. If the sampling comes back high in selenium that will show the well was affected by the coal ash pond. If the sampling comes back high in iron or manganese the well would not be affected by a coal ash pond.

Senator Jackson asked if Mr. Reeder could explain if Sutton Lake plant was a private piece of property. Mr. Reeder replied that this would have to be answered by an attorney but the assumption is in 1970 North Carolina condemned the ground underneath Sutton Lake and allowed Duke Energy to impound it. He could not assume the land underneath Sutton Lake belongs to Duke Energy.

Senator Jackson commented that he could check who is paying property tax on the land.

Senator Jackson asked if Mr. Reeder could explain how to reclassify a private lake. Mr. Reeder replied that Sutton Lake was always connected to the Cape Fear River so it should have always been considered waters of the State. He is unsure as to why previous Administrations have chosen to not classify the lake as waters of the State, especially with the heavy use of the public.



Senator Jackson asked what the process is to reclassify the land as waters of the State and if DENR has set a precedence by doing so. Mr. Reeder replied that DENR has not set a precedent but they did research the lake and determined it should be classified as waters of the State.

Senator Jackson asked who determined the reclassification. Mr. Reeder replied the Administration.

Senator Jackson asked if it was safe to assume the reclassification was done because of its connection to Cape Fear. Mr. Reeder replied that is why they re-evaluated.

Senator Jackson asked now that Sutton Lake is classified as waters of the State, who holds the liability for the lake. Mr. Reeder replied that the State does.

Senator Jackson asked who is reliable for personal liability of environmental issues and public use. Mr. Reeder replied that he could not answer that, it was a legal question.

Representative Dixon asked if the public can be assured the quality of certified testers will test in the same manner if a well shows extra ordinary circumstances will there be an automatic retest from another firm. Mr. Reeder replied that all the labs are state certified labs; all tests will be the right information.

Representative Dixon commented that it is important to know that the well testers are certified.

Representative Hager asked if the ash dams are engineered and built to transfer water through them or are there issues that are damaging the dams that have been there for decades. Mr. Reeder suggested that question to be held for Mr. Tracy Davis.

Representative Hager asked if the constituents in the dam seepage compare to National Pollutant Discharge Elimination System (NPDES) permit. Mr. Reeder replied that the ones that were tested have the same constituents you would find in decant water at low levels. The seepage is at a minimal volume they're "de minimis." The dilution is so great when it hits the rivers.

Senator Brock commented that it is important to know what parties are responsible for properties are responsible for their land and water ways.

Representative Dixon asked if the seepage has the same constituency as decanting water. Mr. Reeder replied that it is the same constituents you expect to find from a coal ash pond, there are a lot of heavy metals. The levels vary on how low the seepage is.

Representative Dixon commented that it is good to point out the information versus misinformation due to news reports showing ugliness of the seepage and from what he has learned is the seepage contains the same in the water that is discharged now. Mr. Reeder said that



they are an unauthorized surface discharge but it is at a minimal nature with no impact to surface water quality.

With no further questions, Representative Hager recognized Ms. Linda Culpepper, Division Director of Waste Management at DENR. She then directed members to his presentation. A copy of his presentation is attached to these minutes as Attachment #10.

Representative Dixon asked if the presentation covered dam safety issue with emergency action plans and if we had staff trained to carry out the plans. Ms. Culpepper said Mr. Tracy Davis would cover that next.

Senator Rabin asked how some of the sites were defined as a coal ash landfills. Ms. Culpepper replied that the facilities applied and met the definitions in the Coal Ash Management Act of structural fill.

Senator Rabin asked if they had a handle on the market for the alternative uses if it is a growing market or a flat market. Ms. Culpepper said that DENR and the Coal Ash Commission are working together on the economic and technology factors of reuse.

Senator Brock asked if Representative McGrady could explain the impact of lengthening the airport runways and if they help local economies.

Representative McGrady in response to Senator Brock that Duke Energy came with an almost no cost solution to expanding the Asheville runway with structural fill. In his opinion, it is a much safer solution then leaving the coal ash where it is. The active coal ash facility is right next to the airport so there is not a transportation issue as there would be in other areas.

Senator Bingham asked on page 3 of the presentation what "other" was on the chart. Ms. Culpepper replied that it is other facilities that burn coal and have ash.

Senator Bingham asked who the other facilities are that burn coal. Ms. Culpepper replied other industrial sites and combustion facilities. Representative Hager replied that Evergreen Packaging in Canton, NC uses coal.

Senator Bingham requested a list of other coal plants in North Carolina. Ms. Culpepper replied she would send him a copy.

With no further questions, Representative Hager recognized Mr. Tracy Davis, Division Director of Energy, Mineral, and Land Resources at DENR. He then directed the Commission to his presentation. A copy of his presentation is attached to these minutes as Attachment #11.

Senator Bingham asked if farm ponds fall under the dam safety law or is that strictly for coal ash ponds. Mr. Davis replied that under the law there is a prevision for agricultural ponds and that is



delegated to the Soil and Water Conservation districts as long as they have a federally licensed engineer.

Senator Bingham asked how they determine the acre feet. Mr. Davis replied that it depends on the geometry of the property, 50 acres equals 1 foot deep or 1 acre equals 50 feet deep.

Senator Bingham asked if the landowner would be responsible for determining acre feet. Mr. Davis replied that he was correct.

Senator Bingham asked if most of the farm ponds would be exempt from the dam safety law. Mr. Davis replied that he was correct, only ponds that fall under the dam safety law subject to Emergency Action Plans (EAP).

Senator Brock asked if non- or for-profit recreational ponds would fall under the law. Mr. Davis replied that yes they would fall under the law for high and immediate dams.

Senator Brock asked if there was a provision in the law for a professional engineer to be used. Mr. Davis said there is no reference in the law to a professional engineer.

Senator Brock asked if he could obtain a copy of their directive. Mr. Davis replied that he would.

Representative Dixon asked if the new kinds of ponds under the law, what instance of failure has there been in the last several years. Mr. Davis replied the last one was the Hope Mills dam failure which was a non-coal ash dam. There has not been any coal ash dam failure in North Carolina. It has been piping failure under the dam.

Senator Rabin asked if he had enough staffed. Mr. Davis replied that they had asked for two positions under the Coal Ash Management Act and the final version noted the funding for part 1 but they did not receive the funding to bring on an EAP engineer so they're using staff in house.

Senator Jackson asked out of all the programs in the state not required by federal authorities, do we know what the surrounding states are doing or are they only doing what they're federally required. Mr. Davis replied that there are 49 states which are part of the Association of State Dam Safety Officials that have dam safety laws. They meet annually to discuss issues, most states require emergency action plans.

Senator Jackson asked if programs that North Carolina's erosion sedimentation programs or others that have been implemented are being used in other states. Mr. Davis replied that other states do have these plans. Federal regulation only comes in with coal mining regulations or permitting.

Senator Jackson asked if a list could be sent to the Commission to show what North Carolina is doing compared to other states. Mr. Davis replied he would.



Representative Hager asked if the dams were engineered to have water flowing through them. Mr. Davis replied that it is normal and expectation of seepage. This process releases the pressure on the dam and the seepage is controlled.

With no further questions, Representative Hager recognized Mr. Benne Hutson, Chair of Environmental Management Commission (EMC). He then directed the Commission to his presentation. A copy of his presentation is attached to these minutes as Attachment #12.

Senator Bingham commented that his presentation was very pleasing to hear and thanked Mr. Hutson and the Commission for their hard work.

Commission discussion and announcements

Representative Hager in closing mentioned that the presentations today were the first report of the first coal ash legislation. He was very impressed by the presentations of Duke Energy, DENR, DPS, the Coal Ash Management Commission, and EMC. He feels we are on the right track and is proud of the legislatures step forward.

There being no further business, the meeting adjourned at 12:18 PM.

Representative Mike Hager,
Presiding

Lindsey Dowling, Committee Clerk